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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. ~~855~~ ///

EOLA M. WRIGHT,

Petitioner,

vs.

W. E. REYNOLDS, COMMISSIONER, PUBLIC BUILDINGS ADMINISTRATION, FEDERAL WORKS AGENCY AND B. C. GARDINER, PERSONNEL OFFICER, PUBLIC WORKS ADMINISTRATION, FEDERAL WORKS AGENCY,

Respondents

PETITION FOR WRIT OF CERTIORARI

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT WITH BRIEF IN SUPPORT THEREOF.

JAMES J. LAUGHLIN,
National Press Building,
Counsel for Petitioner.

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To the Honorable Fred M. Vinson, Chief Justice of the United States, and Associate Justices of the Supreme Court of the United States:

The petitioner, Eola M. Wright, respectfully petitions this Court to grant a writ of certiorari to the United States

Court of Appeals for the District of Columbia Circuit to remove therefrom for review here the record in Case No. 9791, wherein petitioner is the appellant and the respondents are appellees, and in which case the Court announced its decision under date February 3, 1949 affirming the judgment of the United States District Court for the District of Columbia Circuit.

Basis of Jurisdiction

The jurisdiction of this Court is invoked under Section 240A of the Judicial Code, as amended by the Act of February 13, 1925.

The judgment to be reviewed is the judgment of the United States Court of Appeals for the District of Columbia Circuit announced on February 3, 1949.

Summary Statement of Matter Involved

Petitioner filed in the United States District Court for the District of Columbia a complaint in the nature of a petition for a writ of mandamus to compel the respondents, as officers of the United States Government, to reinstate her to a position from which she was discharged January 29, 1942, effective February 10, 1942, or to a position comparable thereto.

She had been employed in the Government service 17½ years, was the widow of a veteran of World War I, and at the time of her separation her efficiency rating was "Very Good".

On December 31, 1941 petitioner was notified that she was to be transferred to duty in the Office of the Fiscal Manager, Division of Project Accounting, Public Buildings Administration of the Federal Works Agency. Petitioner reported for duty and she then ascertained that she would be required to do stenographic work, for which she was not qualified. She then called upon the Personnel

Section of the Department and requested that she be given a written description of her new duties and that she be advised of the reason for her transfer. Steps were then taken to remove her, insubordination being charged. Her contention is that her attempted transfer to the Office of the Fiscal Manager was in conflict with the Veterans Preference Act, that is to say, she was asked to leave her position in the Materials Branch of the Supervising Architect's Office of Public Buildings Administration to take another job, in complete disregard of any preferences to which she was entitled as the widow of a veteran, on the ground that this old job was being abolished. The petitioner claims that this old job was in fact not abolished, but continued in substance, and that another employee was assigned to the position. Petitioner also takes the position that even if it be assumed that she refused to obey a rightful direction of transfer, nevertheless the means used in severing her from Government Civil Service were illegal and in contravention of Section 6 of the Act of Congress of August 24, 1912 (U. S. Code, Title 5, Sec. 652,), as well as administrative regulations promulgated under this severance statute.

A matter even paramount to the points mentioned above relating to the merits of petitioner's cause, which petitioner desires to bring to the attention of this Honorable Court, is the cursory, in fact almost cryptic, manner in which the appellate court below disposed of her appeal from the decision of the United States District Court for the District of Columbia.

Questions Presented

1. Whether or not the petitioner was properly directed to transfer from one Government Civil Service position to another, and whether refusal to accede to such order constituted insubordination sufficient to warrant discharge.

2. Whether or not her discharge from the Government Civil Service was according to the laws and regulations governing such.

3. The question of laches was raised by the respondents in the trial court.

4. Whether or not the United States Court of Appeals for the District of Columbia has the prerogative under existing law to affirm a judgment of the United States District Court for the District of Columbia with a mere statement of its decision, not accompanied with an opinion setting forth the facts and the grounds of its decision.

Reasons Relied upon for Allowance of Writ of Certiorari

This case will require an interpretation of laws bearing on the relationship between our Federal Government, as an employer, and one of its citizens, as an employee.

The importance of clearly delineating the spheres of interest in this particular employer-employee relationship is readily apparent when we consider the legions to be affected.

As to the problem herein raised regarding the Court of Appeals affirming the judgment of the District Court with the following: "We find no prejudicial error in the record", attention of this Court should be directed to the great number of cases which have been dealt similar treatment in recent months. A matter of public policy is involved here. Such a lack of judicial guidance reinforced by local legislation is highly questionable, and can be questioned in this, its only superior court, the Supreme Court of the land. Of course, of no little concern, is the fact that this question appears to be one of novel impression.

JAMES J. LAUGHLIN,

National Press Building.

Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 855

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Respondents

BRIEF IN SUPPORT OF PETITION

Jurisdiction

The jurisdiction of this Court is invoked under Section 240A of the Judicial Code, as amended by Act of February 13, 1925.

Statement of the Case

A concise statement of the case containing, as petitioner believes, all that is material to the consideration of the questions presented, is set forth in the petition under "Summary Statement of Matter Involved", and is not repeated here.

Argument

1. The petitioner's Civil Service position with the Materials Branch of the Supervising Architect's Office of Public Buildings Administration was not in fact abolished. Thus the act of replacing her with another employee without giving consideration to her veteran's preference was illegal. The petitioner, under the usual veterans preference procedure, had a prior right to this job and could not be ousted without the consideration of such preferences.

2. Title 5, Section 652, U. S. Code, provides, among other things, that a Federal employee shall be given written notice that his removal is sought and of the charges preferred against him. It also specifies that the employee shall be allowed a reasonable time for personally answering the same in writing. Such a "reasonable" time was not allowed in this case. The petitioner received the required notice on Saturday, January 3, 1942, and was given only four days to answer. Under the circumstances of this case, this was not a "reasonable" time, and she so advised the appropriate authorities and requested an extension. Pertinent regulations of the Public Buildings Administration require that a hearing be had as a removal prerequisite. Only a few minutes notice was given the petitioner of this hearing. It was therefore impossible for her to prepare her case and therefore the resulting "hearing" was a travesty. No explanation was given petitioner of her right, under these regulations, to be represented by counsel or to have counsel appointed, nor was the petitioner permitted to hear all of the testimony presented against her. See Order 83, Public Buildings Administration, Sec. 1, 6, 7 and 12.

3. The facts show illness on the part of the petitioner and an indisposition as to her attorney, which is an accept-

able and equitable explanation of her laches. It should also be noted that this interim period of delay was interdicted with several communications to the Civil Service Commission in reference to her cause.

4. One of the primary points on which the petitioner bases her contention that the United States Court of Appeals was bound by law to set forth not merely a decision of her problem but to render a written opinion, including the facts on which their decision was rendered and setting forth reasons for the decision, is found in the D. C. Code, 1940 Edition, Section 11-206. This section became part of our law in 1893 and is found at 27 Stat. 436, Ch. 74, Sec. 10. The portion of this section which is pertinent to our argument here reads as follows:

> "The opinion of the said United States Court of Appeals for the District of Columbia in every case shall be rendered in writing, and shall be filed in such case as a part of the record thereof • • •".

Thus we see the United States Court of Appeals for the District of Columbia Circuit is bound by law to render a written opinion and thus our legal problem is a simple one of statutory construction. What is meant by the word "opinion" as used in this law?

This provision was part of the organic act setting up our Court of Appeals. Although this initial law was debated openly on the floor of the Senate during the second session of the 52nd Congress, we have been unable to find any transcript of committee hearings or written committee reports which might here assist us in discerning the intention of the legislature. This leaves us to turn only to the law of the case and reason.

It is our position that the word "opinion" as used here by the legislature means not only a statement of its deci-

sion or judgment, but also a statement of the facts on which this judgment is based, as well as an explanation of the court's reasoning in arriving at such a decision. The authorities are virtually unwaivering in their holding that an opinion is a statement by the court of its reasons for the conclusion reached from an examination of the law and of the facts in controversy, and that judicial opinion is something quite different from judicial decision.

Adams v. *Yazoo* M. V. R. Co., 24 So. 317, 318, 77 Miss. 194, 60 L.R.A. 333;

In re Beam, 117 Atl. 613; 93 N. J. Eq. 593;

State v. *Gray*, 71 Pac. 978, 979, 42 Ore. 261, adopting definition in *Houston* v. *Williams*, 13 Cal. 24, 73 Am. Dec.;

Keane v. *Fisher*, 10 La. Ann. 261;

In re Brown's Guardianship, 107 P. (2d) 1104, 1106, 1107, 1108, 6 Wash. 2d 215.

The term "opinion", as used in a statute providing that the losing party in the appellate court might apply to the Supreme Court for the transfer of a cause from the former court to the latter, on the ground that the opinion of said division of the appellate court contravenes a ruling precedent of the Supreme Court, or that a new question of law is directly involved and was decided erroneously, should be construed in a technical or legal sense, and is not employed therein in the sense of or in place of the terms "decision" or "judgment." The term "opinion", in a legal sense, so far as it applies to judges and courts, has a well-defined meaning. In law, Webster's Dictionary defines the word to mean a formal expression by a judge, court, referee, or the like, of the legal reasons and principles upon which the decision is based. Bouvier's Law Dictionary defines the word "opinion" in practice to be a statement of reasons delivered by a judge or court for giving the judgment which

is pronounced upon a case. Black's Law Dictionary defines the term to mean the statement by a judge or court of the decision reached in regard to a cause tried or argued before them, expounding the law as applied to the case, and detailing the reasons upon which the judgment is based. In the sense and meaning as above defined and well understood in legal parlance, the term "opinion" is used in the statute in question. *Craig* v. *Bennett*, 62 N. E. 273, 274, 158 Ind. 9.

It is hardly arguable that the phrase "we find no prejudicial error in the record" is anything more than the statement of a legal conclusion. Thus it is not an opinion in a legal sense, for it states no reasoning, logical basis or legal principles for this conclusion. *State* v. *Gray, supra.*

The Congressional directive that an opinion, as interpreted above, be rendered, is based on salutory policy. Our whole theory of American jurisprudence is based on *stare decisis*, each case being a landmark to guide those who come after. Certainly such a succinct conclusion of law as was presented by the Court in this instance is hardly a guiding light.

There are three ways by which the Circuit Court of Appeals is apprised of the factual situation underlying the controversy before them in each case: First, a statement of fact in the appellant's brief; a counter-statement of fact in the appellee's brief, and certain portions of the trial transcript, often included in the appendix to the brief. The appellee and appellant's statements of fact often differ. The court must come to its decision on a single, uniform statement of fact. The petitioner certainly has a right to know exactly what view of the facts the Circuit Court has taken in arriving at their conclusion.

In this case in particular, it peculiarly deserved comprehensive treatment by the appellate court in its opinion, in that the trial court had inconsistently found, first, that it was without jurisdiction to hear the cause. Second, that

laches barred the petitioner from pursuing any legal remedies; and third, that it was not sustainable on its merits. The Court of Appeals failed to give us their views on any of these questions.

Conclusion

In view of what has been said we believe that petition for writ of certiorari should be granted.

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Counsel for Petitioner.

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 111

EOLA M. WRIGHT, PETITIONER

v.

W. E. REYNOLDS, COMMISSIONER, PUBLIC BUILDINGS ADMINISTRATION, FEDERAL WORKS AGENCY AND B. C. GARDNER, PERSONNEL OFFICER, PUBLIC WORKS ADMINISTRATION, FEDERAL WORKS AGENCY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The findings of fact and conclusions of law of the District Court for the District of Columbia (R. 15-17) are not reported. The opinion of the Court of Appeals for the District of Columbia Circuit (R. 83) is reported at 172 F. 2d 762.

JURISDICTION

The judgment of the Court of Appeals was entered on February 3, 1949 (R. 84). The time

within which to file a petition for a writ of certiorari was extended by the Chief Justice to and including June 11, 1949 (R. 86-87). The petition for a writ of certiorari was filed on June 11, 1949. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the *per curiam* opinion of the court below was too brief to comply with the statutory requirement, since repealed, that it file a written opinion.

2. Whether petitioner's status, as a widow of a World War I veteran, justified her refusal to accept an intra-agency transfer at the same grade and compensation.

3. Whether petitioner's removal for insubordination was accomplished in substantial conformity with applicable procedural requirements.

4. Whether petitioner's suit, instituted over two years after her removal, was barred by laches.

STATUTES AND REGULATIONS INVOLVED

Pertinent statutes and regulations are set forth in the Argument and Appendix, *infra*.

STATEMENT

Petitioner was, until February 10, 1942, a classified employee in the federal civil service (R. 15-16.) On December 10, 1941, due to a sharp curtailment in the work she was then performing,

petitioner was notified that her assignment was changed from assistant clerk in the Materials Unit, Office of the Supervising Engineer, Public Buildings Administration of the Federal Works Agency to assistant clerk in the Accounting Section, Office of the Fiscal Manager of the same Administration of the same Agency, at the same grade and salary, effective December 18, 1941 (R. 16, 77, 78, 79-80).[1] Petitioner was again advised of her transfer by her superior officer on December 18, 1941 and on December 29, 1941, on which date she was ordered to report to her new assignment immediately (R. 16). Despite these repeated instructions and an additional notification on December 31, 1941, petitioner refused to report for duty (R. 16, 21, 26-27).[2]

On January 3, 1942, petitioner received written notice that, because of her persistent refusal to report to her assignment, she was being charged with insubordination, and that she would have until the close of business on January 7, 1942, to show cause why recommendation should not be made for her removal (R. 16, 22-23). Petitioner failed to reply to this charge (R. 16).

On January 20, 1942, petitioner was given a hearing on the charge of insubordination before a

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[1] The petition for certiorari intimates (p. 2) that petitioner was not notified of her transfer until December 31, 1941. The dates reported above, however, are those found by the District Court, and petitioner does not question these findings here.

[2] The petition for certiorari states (p. 2) that "Petitioner reported for duty." Petitioner's testimony before the hearing board, however, was directly to the contrary (R. 26-27).

Personnel Board of the Federal Works Agency (R. 16, 26-33). Declining to avail herself of the opportunity to call witnesses in her behalf (R. 28), petitioner sought to explain her refusal to report as assigned on the ground that she had "investigated" and discovered that the new position entailed stenographic work for which she was unqualified (R. 26, 27). Neither at this hearing nor at the subsequent trial in the District Court was the source of petitioner's information established. There was, on the other hand, convincing evidence that no stenographic duties were involved in petitioner's new assignment (R. 24, 32, 79). The Personnel Board concluded that petitioner's continued refusal to report for work constituted "the most fundamental insubordination," pointing out that her assumption in advance that she would be assigned duties for which she was unqualified, was unwarranted (R. 29, 24). The Board recommended that, unless petitioner reported for duty by February 1, 1942, she should be separated from the service (R. 25).

Petitioner was not informed of the conditional character of this recommendation, but continued to appear at her old office, refusing to report for duty as directed, until on February 10, 1942, she received an order of separation dated January 29, 1942 and "effective upon receipt of notice" (R. 16-17, 65-66).

Six months after her separation, on August 6, 1942, petitioner wrote to the Civil Service Com-

mission and the Federal Works Agency requesting hearings (R. 17, 38-39, 67). On October 23, 1942, the Civil Service Commission notified petitioner that it had no basis for questioning her removal (R. 17, 40). On December 3, 1942, petitioner wrote to the Personnel Director of the Federal Works Agency (respondent Gardner) requesting reinstatement in the abolished position from which she had been transferred (R. 42). This request was denied on December 11, 1942 (R. 41).

More than two years after her separation, on March 10, 1944, petitioner instituted this suit for a writ in the nature of mandamus restoring her to office and for a judgment for accumulated salary (R. 2, 17).[3] Motions to dismiss and for summary judgment having been denied, a trial was had at which petitioner's testimony and documentary evidence were introduced (R. 12-13, 47-82). The District Court rendered judgment for respondents, holding that (1) petitioner had been guilty of laches; (2) the court lacked jurisdiction to reinstate petitioner retroactively to February 10, 1942; and (3) petitioner's discharge had been "for such cause as would promote the efficiency of the service" and had been effected in accordance with pertinent procedural requirements (R. 17-18).

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[3] By Section 103 of the Federal Property and Administrative Services Act of 1949 (Pub. L. No. 152, 81st Cong.) approved June 30, 1949, the Federal Works Agency, the Public Buildings Administration, and the Office of Commissioner of Public Buildings were abolished and their functions were transferred to the Administrator of General Services.

This judgment was affirmed by the court below (R. 83).

ARGUMENT

1. Until May 24, 1949, D.C. Code, Sec. 11-206 (1940 ed.) provided:

> The opinion of the * * * United States Court of Appeals for the District of Columbia in every case shall be rendered in writing, and shall be filed in such case as a part of the record thereof * * *.

Relying upon this statute, petitioner's principal contention is that the court below erred because, in affirming the judgment of the district court, it wrote simply as follows:

> PER CURIAM: We find no prejudicial error in the record. The judgment of the District Court is therefore affirmed.

As petitioner points out, this contention is "one of novel impression." During the statute's fifty-six years of operation, no such argument appears to have been made, although *per curiam* opinions similar to the one below are not difficult to discover.[4] This long silence suggests the insubstantiality of petitioner's position.

There is considerable authority rejecting the notion that comparable state provisions require the writing of a legal essay in disposing of every

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[4] See, *e.g.*, the following opinions by the same court; *Smith* v. *Ooms*, 166 F. 2d 211; *Teichmann* v. *Parrish*, 157 F. 2d 75; *In the Matter of Hile*, 156 F. 2d 576; *Carborundum Co.* v. *Coe*, 122 F. 2d 36; *Lovenbein* v. *District of Columbia*, 111 F .2d 513.

case appealed.[5] Where, as here, the questions presented are neither complex nor of widespread interest, and the trial court's decision is affirmed, a concise statement that there was no prejudicial error below would seem an adequate compliance with the requirement of a written opinion. Cf. *Holmes* v. *State,* 87 Neb. 710; *Carl* v. *Shaffer,* 71 Ohio App. 339, 347-348; *Raymer* v. *First Nat. Bank of Berwyn,* 184 Okla. 392, 394; *Miller* v. *Atlantic Coast Line R.R. Co.,* 140 S.C. 123, 224-225, certiorari denied, 275 U.S. 556. We submit, moreover, that a moderately careful perusal of the record in this case reveals clearly the facts found by the district court, the legal basis for its judgment, and the propriety of the affirmance below. In these circumstances, it hardly seems reasonable to construe the statute in question as imposing upon this Court the duty of prescribing standards of length and detail for the writing of judicial opinions.[6]

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[5] *People* v. *Burke,* 18 Cal. App. 72, 79; *Eimers* v. *Gussewelle,* 309 Ill. App. 321; *State ex rel. Sluss* v. *Appellate Court of Indiana,* 214 Ind. 686; *Baker* v. *Kerr,* 13 Iowa 384; *State* v. *Donaldson,* 35 Utah 96, 103; *Commonwealth* v. *Paul,* 289 Pa. 452; *Horner* v. *Amick,* 64 W. Va. 172, 175.

[6] Petitioner suggests that a "comprehensive" opinion was peculiarly necessary here in order to clarify an "inconsistency" between the district court's conclusion that it lacked "jurisdiction to reinstate the plaintiff to her position, *as of February 10, 1942*" (emphasis supplied), and its further holdings that petitioner had been guilty of laches and had failed to establish a case of illegal discharge. The mere attempt to state this asserted "inconsistency" reveals its non-existence. The court's conclusion as to its lack of jurisdiction was simply a recognition that it had no power to render a judgment which would be, in effect, an award of back salary. 28 U.S.C. 1346(d)(2),

Nor can petitioner derive any benefit from the suggested general importance of her contention on this score. Prior to the filing of her petition for certiorari, this question was rendered wholly academic by the repeal of the statute invoked. Pub. L. No. 72, 81st Cong., 1st sess., Sec. 138 (May 24, 1949). There is no need to enlarge here on the incongruity of challenging more than half a century of uncontested judicial practice after the basis for even questioning that practice has disappeared.

2. Coming to the merits of this controversy, the judgment below is clearly correct. Petitioner's suit, stripped of irrelevancies, was an inexcusably belated attempt to seek reinstatement in a position she had forfeited through her insubordinate conduct.

a. Petitioner contends that the position from which she was transferred was not actually abolished. Even assuming the correctness of this allegation, which is far from established by the record, we submit that the argument that petitioner's veteran's preference was violated by her transfer is wholly misconceived. Petitioner was admittedly protected by statute against *removal for reduction in force* prior to equally qualified persons without veteran's preference. 19 Stat.

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formerly 28 U.S.C. 41(20); *Callahan* v. *United States*, 122 F. 2d 216 (C.A.D.C.). The correctness of this holding was conceded by petitioner in the district court (R. 81) and is not questioned here. The District Court's other rulings were entirely consistent with this conclusion.

169, 5 U.S.C. 37.[7] But this provision cannot possibly be construed as conferring such a vested right to given duties as to prevent an *intra-agency reassignment, at the same grade and compensation,* the only action taken in petitioner's case. Cf. Field, *Civil Service Law* (1939) p. 185. If there could be any doubt on this score, Congress dispelled it by providing that "an employee may be transferred from a position in one grade to a vacant position within the same grade at the same rate of compensation, * * * in accordance with civil service rules, any provision of existing statutes to the contrary notwithstanding." Act of March 4, 1923, c. 265, Sec. 10, 42 Stat. 1491, 5 U.S.C. 670.

b. Petitioner's complaint regarding the procedural steps leading to her discharge is equally without merit. The Act of August 24, 1912, c. 389, Sec. 6, 37 Stat. 555, 5 U.S.C. 652 (*infra,* pp. 14-15) which petitioner invokes, entitled her to notice of the reasons for her projected removal, a copy of any charges against her, and "a reasonable time for personally answering the same in writing * * * ".[8] The trial court found that petitioner had had the requisite notice and opportunity to reply and concluded that the period from January

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[7] Cf. Sections 2 and 12 of the Veterans' Preference Act, 58 Stat. 387, 5 U.S.C., chap. 17, which became law (on June 27, 1944) after petitioner's discharge.

[8] The provisions of the 1912 Act were incorporated in Civil Service Rule XII. Executive Order No. 7915, 3 CFR, Cum. Supp. (1943), p. 349 (June 24, 1938).

3 to January 7 was a reasonable one for responding to a simple charge of insubordination (R. 17). This conclusion, approved by the court below, is attacked by petitioner. It is amply supported, however, by the record and by administrative and judicial precedent. Cf. *Levine* v. *Farley,* 107 F. 2d 186 (C.A.D.C.); Mayers, *The Federal Service* (1922) p. 93.

Petitioner was afforded a hearing and given the opportunity to call witnesses, though 5 U.S.C. 652 provides that "no examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer making the removal * * *." She now contends that her discharge was illegal in that the hearing did not comply in every detail with Order No. 83 (January 1, 1942) of the Public Buildings Administration (Pet. 6). We submit, however, that this Order, issued by a subordinate official of the Federal Works Agency, conferred no judicially enforceable rights upon petitioner beyond those specified in the above statute regulating civil service removals. See *Levine* v. *Farley,* 107 F. 2d 186, 190 (C.A.D.C.), certiorari denied, 308 U. S. 622. It should be noted in this connection that Executive Order No. 7915 of June 24, 1938 (3 C.F.R., Cum. Supp. (1943), p. 339), which restated the Civil Service Rules including those relating to removals and reductions (fn. 8, *supra,* p. 9), forbade any executive department or agency to "make any modification of its civil service regulations without the approval of the

[Civil Service] Commission." *Id,* p. 350, Rule XVI(2). There is no indication that Order No. 83 had received the requisite approval.

Even assuming that petitioner could rely on Order No. 83 as a basis for her present contentions, the record in this case makes it clear that she suffered no injury because of the procedural omissions of which she now complains. In addition to the opportunities for explanation or compliance afforded by her administrative superiors over a period of nearly two months, petitioner has had the benefit of two judicial hearings. At no point in this process has she satisfactorily explained or justified her insubordination. Against this background, petitioner's belated attack upon the formalities attending her separation would seem little more than a technical afterthought, hardly a persuasive basis for the extraordinary remedy of mandamus.

c. Not only was petitioner's suit without merit; it was also clearly barred by her laches, as the District Court found (R. 17). Petitioner was discharged on February 10, 1942. For six months thereafter she did nothing to seek reinstatement. This delay she at first explained in her statement that "I needed this rest to recover from the unkind treatment I received just prior to my separation * * *" (R. 39). Later, she declared that she was ill with a heavy cold during this period (R. 66-67, 75). The trial judge reasonably could, and indi-

cated that he did, regard this shifting explanation as suspect (R. 80). On October 23, 1942, the Civil Service Commission notified petitioner that it had no basis for questioning her removal, so that her subsequent dealings with that agency were obviously not directed toward reinstatement (R. 40). Petitioner's request for reinstatement addressed to the Personnel Director of the Public Buildings Administration on December 3, 1942, was denied on December 11, 1942.

In short, this suit, begun on March 10, 1944, was not brought until more than two years after petitioner's removal, and over fifteen months after the last pertinent administrative action responsive to her belated request. This Court has long since established that one in petitioner's position "should promptly take the action requisite to effectively assert his rights, to the end that if his contention be justified the Government service may be disturbed as little as possible and that two salaries shall not be paid for a single service." *Arant* v. *Lane,* 249 U.S. 367, 372. The facts of this case bring it squarely within the control of a clear line of authority demonstrating that petitioner has been guilty of laches. *Norris* v. *United States,* 257 U. S. 77; *Arant* v. *Lane, supra; Caswell* v. *Morgenthau,* 98 F. 2d 296 (C.A.D.C.), certiorari denied, 305 U. S. 596; *Morse* v. *United States,* 59 C. Cls. 139, 155, appeal dismissed, 270 U. S. 151.

CONCLUSION

The decision below is correct, and there is no conflict of decisions. We respectfully submit that the petition for a writ of certiorari should be denied.

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APPENDIX

The Act of August 24, 1912, c. 389, Sec. 6, 37 Stat. 555, 5 U.S.C. 652 provides:[9]

> * * * no person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service and for reasons given in writing, and the person whose removal is sought shall have notice of the same and of any charges preferred against him, and be furnished with a copy thereof, and also be allowed a reasonable time for personally answering the same in writing; and affidavits in support thereof; but no examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer making the removal; and copies of charges, notice of hearing, answer, reasons for removal, and of the order of removal shall be made a part of the records of the proper department or office, as shall also the reasons for reduction in rank or compensation; and copies of the same shall be furnished to the person affected upon request, and the Civil Service Commission also shall, upon request, be furnished copies of the same: *Provided, however,* That membership in any society, association, club, or other form of organization of postal employees not affiliated with any outside organization imposing an obligation or duty upon them to engage in any strike, or proposing to assist them in any

[9] This statute was amended, in respects not pertinent to this case, by Pub. L. No. 623, Act of June 10, 1948, c. 447, 80th Cong., 2d Sess.

strike, against the United States, having for its objects, among other things, improvements in the condition of labor of its members, including hours of labor and compensation therefor and leave of absence, by any person or groups of persons in said postal service, or the presenting by any such person or groups of persons of any grievance or grievances to the Congress or any Member thereof shall not constitute or be cause for reduction in rank or compensation or removal of such person or groups of persons from said service. The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee or member thereof, shall not be denied or interfered with.

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